

RETURN DATE: FEBRUARY 13, 2018 : SUPERIOR COURT
SANTE RESTORATION, LLC DBA : JUDICIAL DISTRICT
SERVPRO OF BLOOMFIELD/ENFIELD : OF HARTFORD
VS. : AT HARTFORD
HOLY SPIRIT, LLC : JANUARY 18, 2018

COMPLAINT

COUNT ONE (BREACH OF CONTRACT)

1. The Plaintiff, SANTE RESTORATION, LLC DBA SERVPRO OF BLOOMFIELD/ENFIELD ("ServPro") is a Connecticut corporation with a place of business in Bloomfield, Connecticut and is engaged in the business of providing emergency mitigation and restoration services to the general public.

2. The Defendant, Holy Spirit, LLC ("Holy Spirit") upon information and belief is a Connecticut limited liability company with a principal place of business located in East Hartford, Connecticut.

3. Based upon information and belief, Holy Spirit suffered fire damage to its property located at 514-516 Burnside Avenue in East Hartford, Connecticut.

4. On or about June 12, 2017, Daniel Twum, as manager of Holy Spirit, executed an Authorization to Perform Services and Direction of Payment to authorize ServPro to perform fire damage restoration services at the property located at 514-516 Burnside Avenue, East Hartford, Connecticut and directed that payment for such services go directly to ServPro from its insurance company ("the Agreement"). A copy

of the executed Authorization to Perform Services and Direction of Payment is attached hereto as Exhibit A.

5. Pursuant to the terms of the Agreement, Holy Spirit agreed to pay 1.5% interest per month on any sums due and any and all costs and expenses, including reasonable attorney's fees, incurred in any action to collect any sums due for the services rendered by ServPro.

6. ServPro rendered the fire damage restoration services to Holy Spirit, which services Holy Spirit accepted.

7. Based on the Agreement, Holy Spirit agreed that if it received a check from its insurance company for ServPro's services that it would pay ServPro immediately upon receipt of same.

8. Upon information and belief, the insurance company paid Holy Spirit for the services performed by ServPro.

9. Despite demand, Holy Spirit has neglected, failed and refused to make payment for the services provided by ServPro and now owes ServPro the sum of \$23,168.42 as reflected on the attached invoice, a copy which is attached as Exhibit B.

10. Holy Spirit's conduct as foresaid has caused ServPro economic damages.

COUNT TWO (UNJUST ENRICHMENT)

1-3. The allegations of Paragraphs 1 through 3 of Count One are hereby incorporated by reference and made corresponding Paragraphs 1 through 3 of Count Two as is more fully set forth herein.

4. ServPro supplied fire damage restoration services to Holy Spirit.

5. Holy Spirit received and accepted the benefit of these services, but has refused to pay for them.

6. The reasonable value of these services is \$23,168.42.

7. Holy Spirit has been unjustly enriched.

COUNT THREE (WRONGFULLY WITHHOLDING MONEY)

1-9. The allegations of Paragraphs 1 through 9 of Count One are hereby incorporated by reference and made corresponding Paragraphs 1 through 9 of Count Three as is more fully set forth herein.

10. Holy Spirit wrongfully withheld from ServPro the monies received from its insurance company to pay for the services completed by ServPro in violation of CONN. GEN STAT. § 52-564.

WHEREFORE, the Plaintiff claims:

1. Money damages;
2. Treble damages pursuant to CONN. GEN STAT. § 52-564;
2. Interest;
3. Court costs;
4. Attorney's fees pursuant to the parties' contract; and
5. Such other relief as the Court may deem appropriate.

PLAINTIFF, SANTE RESTORATION, LLC DBA
SERVPRO OF BLOOMFIELD/ENFIELD

By: 

MARGARET F. RATTIGAN
MURPHY, LAUDATI, KIEL & RATTIGAN, LLC
10 Talcott Notch Road, Suite 210
Farmington, CT 06032
Juris No. 104060
Tel. (860) 674-8296
Fax (860) 674-0850

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STATEMENT OF AMOUNT OF DEMAND

Plaintiff claims that the amount of demand, exclusive of interest and costs, is more than FIFTEEN THOUSAND DOLLARS (\$15,000.00).

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Authorization to Perform Services and Direction of Payment

Exhibit A
1/2

Customer Name: Theresa Gardener Date of Loss: 6-12-2017
Loss Address: 514-516 Burnside Ave
City: East Hartford State: CT Zip: 06118
Insurance Company: _____ Claim Number (if available): _____

The undersigned Customer, being the building owner, owner's representative, or resident, authorizes the Provider identified below to perform any and all necessary cleaning and/or restoration services on Customer's property located at the property address above, and with respect to items that need to be cleaned at a remote location to remove and clean such items as necessary.

Customer authorizes _____ Insurance Company, herein referred to as "Insurance Company," to pay Provider solely and directly for that portion of the work covered by Customer's insurance policy.

If, for any reason, Customer receives a check from Insurance Company made payable to Customer, Customer agrees to pay Provider immediately upon receipt of the check. In order to expedite payment to Provider, Customer hereby appoints Provider as attorney-in-fact, authorizing Provider to endorse Customer's name on Insurance Company checks or drafts, and to deposit Insurance Company checks or drafts for Provider services.

Customer agrees to pay Customer's deductible in the amount of \$ _____ that applies to this claim. If any amounts owing to Provider for Provider services are not covered by insurance, Customer agrees to pay those amounts to Provider within fifteen (15) days of Customer's receipt of invoice. It is fully understood that Customer and its agents, successors, assigns, and heirs are personally responsible for any and all deductibles and any costs not covered by insurance. Interest and finance charges will be charged at the maximum allowable by law, or at 1.5% per month, whichever is less, on accounts over thirty (30) days past due. Time is of the essence.

Customer agrees that Provider is working for the Customer and not Customer's insurance company or any agent/adjuster.

Property Owned By: Theresa Gardener

860-328-2443

Remarks: _____

I HAVE READ THIS AUTHORIZATION TO PERFORM SERVICES AND DIRECTION OF PAYMENT, INCLUDING THE TERMS AND CONDITIONS OF SERVICE ON THE REVERSE SIDE HEREOF, AND AGREE TO SAME.

Customer Reviewed Customer Information Form: ☐ Y ☐ N

Customer's Signature: _____

Printed Name: _____

Date: _____

E-mail Address: _____

Provider's Signature: _____

Franchise Legal Name: _____

d/b/a SERVPRO® of: _____

Date: _____

Contractor License #: _____

[Signature]
Daniel Twum

Authorization to Perform Services and Direction of Payment

Terms and Conditions of Service

READ CAREFULLY

Note: This Contract includes a limitation of liability and limitation of remedies.

1. SERVPRO® is one of the largest nationwide Cleaning and Restoration Franchise Systems in the United States. The SERVPRO® Franchise owner identified on the front of this Contract (the "Provider") is an independent contractor who agrees to perform the services identified on the front of this Contract (the "Services"). Client agrees to purchase, receive, and pay for the Services pursuant to the terms and conditions of this Contract. Servpro Industries, Inc., the Franchisor, is not a party to any agreement with Client, is not a guarantor of the Provider's Services, and is not subject to liability arising out of such Services.
2. Provider's performance of the Services is limited by, among other things, the pre-existing conditions and characteristics of the premises, material, fabrics, furniture, and/or other items. PROVIDER EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY PRE-EXISTING CONDITIONS. Client shall retain responsibility and shall be liable for all effects of and costs necessary to correct such conditions, including, by way of example and not limitation, the conditions identified below:
 - (a) Provider may, in its sole discretion, pre-test materials for removability of spots or stains; dye or color fastness; shrinkage; fading; adhesive breakdown; or other problems. It is not always possible to determine these conditions in advance. PROVIDER DOES NOT GUARANTEE SPOT OR STAIN REMOVAL AND COLOR FASTNESS OR PREVENTION OF SHRINKAGE, FADING, OR ADHESIVE BREAKDOWN.
 - (b) Provider DOES NOT GUARANTEE that wall and ceiling cleaning will restore the original color to painted surfaces.
 - (c) Not all fabrics are conducive to cleaning. Provider shall use reasonable efforts to advise Client of any adverse effects which may be reasonably foreseen due to the nature of the fabric or material involved. PROVIDER DOES NOT GUARANTEE THAT SUCH MATERIALS CAN BE CLEANED OR THAT THERE WILL BE NO ADVERSE EFFECTS FROM ANY ATTEMPT TO CLEAN SUCH FABRICS.
 - (d) A variety of materials are used in the manufacturing, upholstery and/or installation process. These materials include backing, lining, tacks, or other unknown substances that may cause discoloration or other adverse effects to the face material. Client acknowledges that it is impossible to determine when such adverse effects may occur and PROVIDER DOES NOT GUARANTEE AGAINST SUCH ADVERSE EFFECTS.
 - (e) Client acknowledges and agrees that mold is commonly found throughout the environment and that it is impossible to eradicate mold. PROVIDER DOES NOT GUARANTEE THE REMOVAL OR ERADICATION OF MOLD.
 - (f) Client acknowledges and agrees that limited photographs or video of the damage and cause may be made solely for work process and insurance claims purposes.
3. PROVIDER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND ALL IMPLIED WARRANTIES (EITHER IN FACT OR BY OPERATION OF LAW) INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. THIS CONTRACT PROVIDES FOR THE PROVISION OF SERVICES AND DOES NOT PROVIDE FOR A SALE OF GOODS.
4. **Limitation of Liability:** IN NO EVENT SHALL PROVIDER, ITS OWNERS, ANY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, FRANCHISOR, OR AFFILIATES BE RESPONSIBLE FOR INDIRECT, SPECIAL, NOMINAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, OR FOR ANY PENALTIES, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ASSERTED, INCLUDING CONTRACT, NEGLIGENCE, WARRANTY, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF IT HAD BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE; OR FOR CLAIMS BY A THIRD PARTY. THE MAXIMUM AGGREGATE LIABILITY SHALL NOT EXCEED THREE TIMES THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES OR ACTUAL PROVEN DAMAGES, WHICHEVER IS LESS. IT IS EXPRESSLY AGREED THAT CUSTOMER'S REMEDY EXPRESSED HEREIN IS CUSTOMER'S EXCLUSIVE REMEDY. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Some states/countries do not allow the exclusion or limitation of incidental or consequential damages, so the above may not apply to you.
5. Should Provider bring legal action to collect monies due under the Contract or should the matter be turned over for collection, Provider shall be entitled, to the fullest extent permitted under law, to reasonable legal fees and costs of any such collection attempt, in addition to any other amounts owed by Client. This attorney fee provision shall not be effective or enforceable in jurisdictions where attorney fee provisions are made reciprocal or invalid by operation of law. Consent is hereby given for filing of mechanic's liens by Provider for the work described in this contract on the property on which the work is performed if Provider is not paid.
6. Any labor, materials or other work beyond that identified in this Contract shall require a written amendment to this Contract and will result in additional charges.
7. Any claim by Client for faulty performance, for nonperformance or breach under this Contract for damages shall be made in writing to Provider within sixty (60) days after completion of services. Failure to make such a written claim for any matter which could have been corrected by Provider shall be deemed a waiver by Client. NO ACTION, REGARDLESS OF FORM, RELATING TO THE SUBJECT MATTER OF THIS CONTRACT MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE CLAIMING PARTY KNEW OR SHOULD HAVE KNOWN OF THE CAUSE OF ACTION.
8. A failure of either party to exercise any right provided for herein shall not be deemed to be a waiver of any right hereunder.
9. CLIENT AND PROVIDER EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL CLAIMS OR CAUSES OF ACTION (INCLUDING COUNTERCLAIMS) RELATED TO OR ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS CONTRACT AND AGREE THAT ANY CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY.
10. If any provision of this Contract is found to be ineffective, unenforceable or illegal for any reason under present or future laws, such provision shall be fully severable, and this Contract shall be construed and enforced as if such provision never comprised a part of this Contract. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the ineffective, unenforceable or illegal provision or by its severance from this Contract.
11. No modification, termination, or attempted waiver of this Contract shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.

SERVPRO® Franchisees are always looking for motivated employees.

SERVPRO's Individually owned and operated franchises offer a variety of positions including crew chief, production technician, marketing representative, administrative assistant, and many more.

Exhibit B

Bill To

Holy Spirit, LLC - Daniel
Twum
514 Burnside Ave
East Hartford, CT 06118

Ship To

Holy Spirit, LLC - Daniel Twum
514 Burnside Ave
East Hartford, CT 06118

Date

7/21/2017

4100988



Fire & Water - Cleanup & Restoration™

100 Peters Road
Bloomfield, Ct
06002

(860) 216-2785
TIN: 46-1140339

Independently Owned and Operated

Description	Qty	Rate	Amount
Commercial fire restoration.		18,898.00	18,898.00T
Residential debris hauling subcontracted.		818.00	818.00T
Board-up work related to Fire Restoration on commercial properties		2,069.07	2,069.07T
Sales Tax & Use		6.35%	1,383.35

The customer acknowledges that permanently discolored, faded and/or bleached areas on carpet, upholstery, drapery or other types of material sometimes make it impossible to restore to the original color or condition. Spot Removal is not guaranteed.

I hereby acknowledge the satisfactory completion of the above - described work.

(X) _____
Customer Signature

Total	\$23,168.42
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Payments/Credits	\$0.00
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Balance Due	\$23,168.42
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TERMS OF PAYMENT: Unless otherwise specified on this Invoice, payment is due in full upon completion of service. Interest will be charged at the maximum allowable by law, or at 1.5% per month, whichever is lesser, on accounts over 30 days past due.